IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 591 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NIYANT NAVINCHANDRA PANDYA

Versus

STATE OF GUJARAT

Appearance:

MS MEGHA JANI for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/08/2001

ORAL JUDGEMENT

#. The petitioner is serving as Associate Professor and Head of the Department at M.P.Shah Medical College, Jamnagar. He was appointed at Jamnagar in April, 2000. Prior to that he was serving at the Ophthalmology

Department at Vadodara Medical College between 20.8.1993 and 16.4.2000.

#. It is required to be noted that the petitioner was holding the charge of Head of the Department, i.e. of Ophthalmology Department, at M.P.Shah Medical College, Jamnagar at the relevant time. Between 8.11.2000 and 5.1.2001 certain operations were performed at the said Jamnagar Hospital which resulted into loss of eye sight or some infection in the sense that some patients suffered severe eye infection and some lost their eye sight. The petitioner was, thereafter, served with the suspension order dated 15.1.2001 which is at Annexure-D to the petition. It is stated in the said order that the petitioner, who is working as Co-Professor and Head of Unit of Ophthalmology was required to make detailed inquiry into the reasons which resulted in eye infection and two cases of losing eye sight which occurred in last November by stopping work of operation. It is also stated in the said order that such type of incidents had occurred in December and January, 2001 and detailed inquiry was required to be made into the reasons for the same and to make detailed report in writing to the Medical Superintendent taking guidance of the Expert, but the same was not done. It is further stated in the said order that the petitioner has given oral report to the Medical Superintendent that the infection cases during the operation of cataract are increasing, but it was necessary to make report to the Medical Superintendent by considering the serious fact that such patients have lost eye sight, but the same was not done. It is also stated that when cases of frequent infection and blindness were increasing, it was necessary for the petitioner to call other experts from outside and take their advice, but the same was not done. It was, therefore found that there is a prima facie case of negligence which is stated as serious misconduct as per Rule 3 of the Gujarat Civil Service (Discipline) Rules, 1971. On the aforesaid ground, the petitioner was placed under suspension by the said order. In paragraph 2 of the suspension order, it is mentioned that, with a view to see that the petitioner may not continue such type of misconduct during his service and that he may not make efforts to tamper with the evidence on record or may not try to influence the witnesses, it was found that he was not required to be continued in active service of the Government. On the aforesaid ground, the petitioner was suspended. The aforesaid order is challenged by the petitioner in this petition.

#. On behalf of the petitioner, it was contended by

Ms.Jani, learned advocate, that the petitioner had not performed any operations nor any patient was treated by him, and therefore, the petitioner was not in any way concerned with the incident in question. It is further submitted that, those Doctors, who have actually performed the operations, have not been suspended. It is also submitted that, when the aforesaid six operations were performed the petitioner was on leave. There is no denial to these averments as no affidavit-in-reply has been filed by the respondents. In para 8(B), the petitioner has averred as under :

> "The petitioner states that none of the 10 operations were performed by the petitioner or by the unit of the petitioner. Not only this, when three operations on 8.11.2000 and three operations on 9.12.2000 took place, the petitioner was not in Jamnagar. The petitioner was on leave from 31.10.2000 to 14.11.2000 at Vallabh Vidhyanagar and Vadodara. These were the days of Diwali vacation and hence the petitioner was on leave. Thus the petitioner was not present in Jamnagar when the first three operations resulting in infection were done on 8.11.2000. The petitioner again not in Jamnagar when three operations were performed on 9.12.2000. On 6th, 7th and 8th December 2000, the petitioner had gone to Ahmedabad for examination of medical students. On 9th December, 2000 the petitioner was at Rajkot on examination duties and on 10th December, 2000, the petitioner attended to examination duties at Jamnagar Medical College. Thus, when six operations were performed, the petitioner was not in Jamnagar."

In para 8(C) the petitioner has averred as under :

> "The petitioner states that none of the ten operations were performed either by the petitioner or by the unit of the petitioner. The operations on 8.11.2000, 22.11.2000 and 9.12.2000 were performed by unit no.2. On 8.11.2000 and 22.11.2000, the petitioner was with unit no.1 and was not concerned with the operations and the post-operative treatment of the patients admitted by and under the care of unit no.2. On 9.12.2000, the petitioner was at Rajkot. Other three operations on 5.1.2001 were performed by unit no.1. As is stated hereinabove, the petitioner was functioning as Head of unit no.2

from 2.01.2001. Thus, the petitioner has not performed any of the 10 operations in which infection was observed post-operation. In the circumstances, the impugned order suspending the petitioner is ex facie unreasonable and without application of mind."

#. It is required to be noted that exact cause of infection was not known and the matter is still under investigation to find out the real cause for such infection. It was argued by the learned advocate for the petitioner that, therefore, at the relevant time, since the cause was not known, it was not possible for the petitioner to suggest any preventive measure. Mr.Joshi, learned AGP, on instructions from the department, fairly stated that the petitioner had not taken part in any of the operations which were performed during the relevant time. Mr.Joshi, however, submitted that the petitioner is not suspended on the ground of his negligence in performing the operations, but he was required to be suspended as he had not taken care to prevent the situation and as a head of the department, he was required to take quick steps by making necessary report, and therefore, he was negligent in performing his duty as the head of the department.

#. In view of the aforesaid fact, it is clear that the petitioner was not a member of the Operation Team which performed the operations on 10 patients at the relevant time. Not only that, the petitioner was on leave during sometime, as averred in the petition. It is also not in dispute that except the petitioner and Medical Superintendent, no other members including those who performed the operations, were suspended.

#. It is, no doubt, true that as Head of the Department, the petitioner was required to be more vigilant, but as stated earlier, at the relevant time, cause of such infection was not known and I am told that, till today, nobody is able to find out the real cause in connection with the incident in question. It is stated by the learned advocate Ms.Jani that, during the entire career of the petitioner, at no point of time, he was subjected to the charge of negligence and that because of some unknown reasons, the incident in question had occurred.

#. Considering the facts and circumstances of the case, I am of the opinion that, this is not a case in which it can be said that, if the petitioner is allowed to continue in service, he may either tamper with the evidence or he may repeat the said incident in future.

There is absolutely no basis or foundation for coming to such conclusion. It cannot be said that the petitioner was responsible for the tragedy in question which had occurred at M.P.Shah Medical College at Jamnagar. Even till today, the cause regarding the incident in question is not known. Except the petitioner and Medical Superintendent, none is suspended. Even the Doctors, who actually perforemd the operations and gave post operative treatment to the concerned 10 patients, have also not been subjected to any such order. In the facts and circumstances of the case, it cannot be said that the petitioner was so much culpably negligent that he is required to be suspended immediately. It is also required to be noted that even though more than six months have passed, the petitioner is not served with any chargesheet nor any departmental inquiry is initiated till today. There is some force in the argument of the petitioner that since immediate cause was not known, it was not possible for the petitioner to take immediate preventive action in this behalf, and, as stated earlier, the real cause is yet not known till today.

#. Under the circumstances, it cannot be said that the petitioner was solely responsible for the incident in question especially when it is an admitted fact that he has neither taken any part in operations nor has he given any post operative treatment. In the aforesaid circumstances, therefore, it cannot be said that, if the petitioner is allowed to continue in service, he may tamper with the evidence or may repeat the said incident again.

#. Under the circumstances, in my view, this is not a case in which the petitioner is required to be continued under suspension for such a long time. It also, ipso facto, cannot be said at this stage that so called inaction on the part of the petitioner may result in his dismissal from service. In any case, ultimately after the full-fledged inquiry, it is always open for the disciplinary authority to pass appropriate order against the petitioner, but, prima facie, it cannot be said that, negligence of the petitioner was of such a nature which requires his immediate suspension from duty. Ms.Jani, learned advocate, at the suggestion of the Court and under the instructions from his client, has fairly agreed that if the petitioner is allowed to continue as Associate Professor without designating him as Head of the Department, he is willing to continue to serve on the said post as Associate Professor and that he will not make any grievance as to why he has not been given the charge of the Head of the Department. In my view,

therefore, there is nothing wrong if the petitioner is allowed to continue as Associate Professor without giving him the charge of the Head of the Department.

##. Under these circumstances, and considering the totality of the facts and circumstances of the case, order of suspension, which is at Annexure-D to the petition, is required to be quashed and set aside and accordingly, the same is quashed and set aside. It will be open for the State Government, therefore, to reinstate the petitioner on the post of Associate Professor without giving him the charge of the Head of the Department. The appropriate order of reinstatement of the petitioner on the post of Associate Professor may be passed within a period of fifteen days from the date of receipt of the writ of this Court. It is clarified that in case the petitioner is exonerated in the departmental inquiry, then, naturally he will be entitled to his original post as well as the designation of the Head of the Department and at that stage, the Government may pass appropriate order in that respect. It is only during the pendency of the inquiry that the petitioner is ordered to be continued as an Associate Professor without giving him charge of the Head of the Department till the inquiry is over. Rule is made absolute to the aforesaid extent.

##. It will be open for the petitioner to serve this order directly to the department.

(P.B.Majmudar,J)
(pathan)